IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIFTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE M.H.S. ANSARI

and
THE HON'BLE MR JUSTICE T.CH.SURYA RAO

WRIT PETITION NO : 4365 of 2005

Between:

M/s. Gowda Hostel, rep. by its Secretary, P.Maheshwar Goud,
S/o. 3-6-573/1, Himyathnagar, Hyderabad, S/o. P. Swamy Goud,
R/o. Hyderabad.

..... PETITIONER

AND

1 Appellate Dy. Commissioner (CT), Secunderabad Division, Hyderabad.
2 Commercial Tax Officer, Hyderguda, Circle, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to Issue any appropriate writ, order or direction preferably a writ in the nature of Writ of Mandamus, declaring the order or in Appeal GI No.593/04 dt. 23.11.2004 wherein the Appeal of the petitioner was rejected on the ground of non payment of 12.5% of disputed tax as being illegal, arbitrary and violative of Article 14 of the Constitution of India and consequently set aside the same and pass such other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

Counsel for the Petitioner: MR.T.SURYA SATISH

Counsel for the Respondents: GP FOR COMMERCIAL TAX

The Court at the admission stage made the following :

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ORDER: (per the Hon'ble Sri Justice T.Ch.Surya Rao)

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In the instant writ petition, the petitioner is assailing the orders dated 23-11-2004, passed by the 1st respondent in Appeal G.I.No.593/2004, filed by the petitioner, as illegal, arbitrary and without jurisdiction.

2. Impugned order was passed rejecting the petitioner's appeal on the ground of non-payment of 12.5% disputed tax, which has to be paid to maintain the appeal before the Appellate Deputy Commissioner.

3. In the instant writ petition impugned order has now been sought to be assailed mainly on the ground that it opposed to principles of natural justice. In view of the same, without adverting to the merits of the case, we are inclined to dispose of the present writ petition having regard to the fact that the appeal sought to be filed by the petitioner was dismissed without affording an opportunity of personal hearing before passing the order of dismissal. We are of the considered view that the principles of natural justice will require a hearing before passing appropriate orders by the authorities. At the same time, the requirement as regards the deposit of 12.5% of the disputed tax, which is a condition precedent for maintaining the appeal, cannot be dispensed with and in that view of the matter the rejection cannot be said to be illegal.

4. Under the circumstances, we are inclined to dispose of the present writ petition with the following directions so as to maintain the equity:

The petitioner shall deposit 12.5% of the disputed tax, which is a condition precedent for maintaining the appeal, within one week from the date hereof and on such deposit 1st respondent shall hear the appeal by affording every opportunity to the petitioner and dispose of the same in accordance with law.

5. With the above directions, the writ petition stands disposed of at the threshold.

M.H.S.ANSARI, J.

T.Ch.SURYA RAO, J.

Dated 15-03-2005.

skmr

..... REGISTRAR

To

1 The Appellate Dy. Commissioner (CT), Secunderabad Division, Hyderabad.
2 The Commercial Tax Officer, Hyderguda, Circle, Hyderabad.

3 2 CCs to G.P. for Commercial Tax, High Court Buildings,

Hyderabad.(OUT).

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